Asia Pacific Parcel Tankers Pte Ltd v The Owners of the Ship or Vessel 'Normar Splendour'

HIGH COURT (JOHOR BAHRU) — ADMIRALTY IN REM NO 27–17 OF 1997
SYED AHMAD HELMY JC
31 JULY 2001

Civil Procedure *— Contempt of court — Breach of court order — Sale of vessel under arrest — Vessel not physically under arrest, whether contempt — Whether defendant could be heard further in same proceedings without first having purged the contempt*

Shipping and Navigation *— Action in rem — Sale of vessel under arrest — Vessel not physically under arrest — Whether contempt*

The defendant applied in encl 24, inter alia, for stay of proceedings pending referral of the matter for arbitration which was heard on 6 April 2000 wherein plaintiff's counsel raised a preliminary objection in that the defendant had committed a prima facie contempt of court by selling off the vessel 'Normal Splendour' whilst the warrant of arrest dated 13 November 1997 issued by the court was still outstanding and by reason thereof the defendant could not be heard further in the same proceedings for their own benefit unless and until they had purged their contempt. It was the defendant's contention that a warrant of arrest was only effective so long as the res to which it related was within the jurisdiction of the court that issued the warrant. The warrant of arrest though subsisting could not give rise to contempt for non compliance so long as the vessel was not physically under arrest. The issue for determination was whether by disposing of the vessel which was under a warrant of arrest dated 16 November 1997 issued by the court, the defendant commited a prima facie contempt of court and whether the defendant could be heard further in the same proceedings without first having purged the contempt.

Held, upholding the preliminary objection and dismissing encl 24 with costs:

(1) A defendant in contempt cannot be heard further in the same proceedings for his own benefit unless and until he has purged his contempt (see p 249G); *Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217 followed.

(2) The act of selling the vessel in the face of the warrant of arrest which was in full force and effect was a blatant disobedience of a court order and such blatant disobedience and utter disrespect could not be condoned by the court. To add insult to injury, this was the second act of contempt committed by the defendants and they did not seem to be remorseful of their action but rather taking a recalcitrant, intransigent and highly confrontational attitude. The act of disposing the vessel in the face of an existing court order amounted to contempt of the highest degree for which the defendants could not treat with impunity (see p 250C–E).

(3) It was indeed ironic for the defendant who had clearly shown a blatant disregard for the warrant of arrest to now submit to court and persuade the court to order the dispute for arbitration. The court could not, in the circumstances, be made to aid a recalcitrant contemnor for by having 'little or no regard to the order issued against him, he has forfeited his right to be heard or at least postponed that right until he has suitably purged the contempt'. In such a situation, it would be a travesty of justice to invoke the court's discretion in favour of a recalcitrant contemnor who treated court's order with impunity and disrespect (see p 250E–F).

(4) By the action of disposing the vessel, the defendant had prima facie committed contempt of the warrant of arrest dated 13 November 1997 and they could not, based on the principle of law established in *Wee Choo Keong*'s case aforesaid, proceed with their application in encl 24 unless and until they have purged the contempt (see p 250G–H).

[**Bahasa Malaysia summary**

Defendan telah memohon dalam lampiran 24, antara lain, untuk penggantungan prosiding sementara perkara tersebut dirujuk ke timbangtara yang telah didengar pada 6 April 2000 di mana peguam plaintif telah menimbulkan satu bantahan awal bahawa defendan telah melakukan satu penghinaan mahkamah prima facie dengan menjual kapal 'Norma Splendour' semasa waran penahanan bertarikh 13 November 1997 dikeluarkan oleh mahkamah masih belum selesai dan oleh sebab tersebut defendan tidak dapat didengar dengan tujuan untuk memperolehi apa-apa kebaikan seterusnya dalam prosiding yang sama kecuali dan sehingga mereka dibersihkan daripada penghinaan mereka. Adalah hujah defendan bahawa satu waran penahanan hanya berkuatkuasa selagi res yang ia dikaitkan berada dalam bidang kuasa mahkamah yang mengeluarkan waran tersebut. Waran penahanan tersebut walaupun wujud tidak menimbulkan penghinaan kerana ketidakpatuhan selagi kapal tersebut secara fisikal tidak ditahan. Persoalan untuk ditentukan adalah sama ada dengan menjual kapal yang di bawah satu waran penahanan bertarikh 16 November 1997 yang telah dikeluarkan oleh mahkamah, defendan telah melakukan satu penghinaan mahkamah prima facie dan sama ada defendan boleh didengar seterusnya dalam prosiding yang sama tanpa terlebih dahulu dibersihkan daripada penghinaan tersebut.

Diputuskan, mengekalkan bantahan awal tersebut dan menolak lampiran 24 dengan kos:

(1) Seorang defendan yang melakukan penghinaan tidak boleh didengar seterusnya dalam prosiding yang sama untuk kebaikan diri sendiri kecuali dan sehingga beliau dibersihkan daripada penghinaan beliau (lihat ms 249G); *Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217 diikut.

(2) Tindakan menjual kapal tersebut tatkala wujudnya waran penahanan yang berkuatkuasa sepenuhnya merupakan satu keingkaran yang nyata terhadap perintah mahkamah dan keingkaran nyata dan sikap tidak hormat sedemikian tidak boleh dibiarkan oleh mahkamah. Lebih teruk lagi, ini merupakan tindakan penghinaan kedua yang telah dilakukan oleh defendan-defendan dan mereka tidak kelihatan seperti berasa kesal terhadap tindakan mereka tetapi sebaliknya mengambil satu sikap yang degil, enggan berkompromi dan amat konfrantasi. Tindakan menjual kapal tersebut semasa terdapat satu perintah mahkamah membentuk satu penghinaan pada peringkat tertinggi di mana defendan-defendan tidak boleh dianggap bebas daripada hukuman (lihat ms 250C–E).

(3) Adalah amat ironik untuk defendan yang telah dengan jelas menunjukkan satu keingkaran yang nyata terhadap waran tangkapan tersebut untuk sekarang mengemukakan kepada mahkamah dan meyakinkan mahkamah untuk memerintahkan pertikaian tersebut dirujuk kepada timbangtara. Mahkamah tidak boleh, dalam keadaan ini, digesa untuk membantu penghina yang degil tersebut kerana dengan 'sedikit atau tidak mengambil berat kepada perintah yang dikeluarkan terhadap beliau, beliau telah melepaskan hak beliau untuk didengar atau sekurang-kurangnya menangguh hak tersebut sehingga beliau sesuai untuk dibersihkan daripada penghinaan tersebut'. Dalam keadaan begini, ia adalah satu persendaan keadilan untuk menggunakan budi bicara mahkamah untuk menyebelahi penghina yang degil tersebut yang telah menganggap perintah mahkamah bebas daripada hukuman dan mengambil sikap tidak hormat terhadap perintah tersebut (lihat ms 250E–F).

(4) Melalui tindakan menjual kapal tersebut, defendan telah prima facie melakukan penghinaan terhadap waran penahanan bertarikh 13 November 1997 dan mereka tidak boleh, berdasarkan prinsip undang-undang yang dinyatakan dalam kes *Wee Choo Keong* sebelumnya, meneruskan dengan permohonan mereka dalam lampiran 24 kecuali dan sehingga mereka membersihkan penghinaan tersebut (lihat ms 250G–H).]

Notes

For cases on contempt due to breach of court order, see 2(1) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1435–1450.

For cases on sale of vessel generally, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 804–805 and 967.

Cases referred to

Asia Pacific Parcel Tankers Pte Ltd v The Owners of the Ship or Vessel 'Normar Splendour' [1999] 6 MLJ 652 (refd)

Ng Hee Thoong & Anor v Public Bank Bhd [1995] 1 MLJ 281 (refd)

Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal [1993] 2 MLJ 217 (folld)

Ahalya Mahendra (*KM Chye & Murad*) for the plaintiff.
Clarence Edwin (*Lee Ong & Kandiah*) for the defendant.

Syed Ahmad Helmy JC:. Application by the defendant in encl 24 is, inter alia, for stay of proceedings pending referral of the matter for arbitration. The application for stay came up for hearing before me on 6 April 2000 wherein plaintiff's counsel raised a preliminary objection in that the defendant has committed a prima facie contempt of court by selling off the vessel 'Normal Splendour' whilst the warrant of arrest dated 13 November 1997 issued by this honourable court is still outstanding and by reason thereof the defendant cannot be heard further in the same proceedings for their own benefit unless and until they have purged their contempt.

In advancing the preliminary objection aforesaid, the plaintiff relies entirely on the Supreme Court decision of *Wee Choo Keong v MBf Holdings Bhd & Anor and another appeal* [1993] 2 MLJ 217.

The essence of the plaintiff's contention of contempt arose out of the vessels' action in breaking arrest and sailing out of the court's jurisdiction sometime in early February 1998 and consequently, the sale of the vessel to Tartan Shipping Inc Panama pursuant to a bill of sale dated 9 November 1999.

The plaintiffs had earlier filed contempt proceedings against the defendant for the breach of the warrant of arrest and the court found the defendant's master in contempt of court .

The defendant's argument in that since the court had only held that the earlier contempt of breaking arrest was committed by the master and not the defendant and since the vessel is out of the jurisdiction and out of the custody of the sheriff there can not be any question of contempt. In short, it is the defendant's contention that a warrant of arrest is only effective so long as the res to which it relates is within the jurisdiction of the court that issued the warrant. The warrant of arrest though subsisting cannot give rise to contempt for non compliance so long as the vessel is not physically under arrest.

The issue for determination is whether by disposing of the vessel which was under a warrant of arrest dated 16 November 1997 issued by this honourable court, the defendant commits a prima facie contempt of court and whether the defendant can be heard further in the same proceedings without first having purged the contempt.

It is interesting to note that there is no rebuttal evidence nor dispute by the defendant in respect of the averment by the plaintiffs relating to the sale of the vessel.

The evidence relating to the sale of the vessel is to be found in paras 4 and 5 of the affidavit of Cheok Hoon Thiam Thomas affirmed on 4 August 2000 on behalf of the plaintiff which states:

> 4 Further investigations conducted by the plaintiffs reveal that the defendants have sold their vessel 'Normal Splendour' ('The Vessel'). The plaintiffs enquiries with ICC-International Maritime Bureau reveal that

A the vessel was sold to Tartan Shipping Inc Panama and the Vessel has since been renamed the 'Tartan'. A search conducted by Shirley & Associates at the Bureau of Vessels and Public Registry of Panama identifies the sale and purchase date of the Vessel, according to the Bill of Sale, to be 9 November 1999. Annexed hereto and marked 'CHT-A' and 'CHT-2' respectively, is a copy of a fax dated 25 July 2000 from ICC-International Maritime Bureau and a fax dated 26 July 2000 from Shirley & Associates, evidencing the aforesaid.

B

5 I crave leave to refer to para 29 of my first affidavit. As stated therein, the defendants' sole assets was the vessel. As this has been sold, it is very likely that the defendants will be unable to satisfy any arbitral award obtained by the plaintiffs should the matter be stayed in favour of arbitration in London.

C

The averments aforesaid being a positive and material averments was never contradicted and rebutted by the defendants and based on the principles as established by the Court of Appeal in *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281, the fact regarding the sale is duly admitted by the defendant.

D

It should also be observed that aside from proof of sale of the vessel the defendants have not applied to set aside the warrant of arrest nor has the defendant obtained any relief from complying with the warrant of arrest and the cumulative effect clearly justifies my finding that the defendants are prima facie in contempt of the warrant of arrest dated 16 November 1997.

E

The fact that the vessel is out of the jurisdiction of the court cannot exculpate the defendants from non compliance with the order of court in the form of the warrant of arrest dated 16 November 1997. As was appropriately held by his Lordship Abdul Malik Ishak J in the reported decision of *Asia Pacific Parcel Tankers Pte Ltd v The Owners of the Ship or Vessel 'Normar Splendour'* [1999] 6 MLJ 652 at p 702:

F

> It goes without saying that any person breaking arrest or interfering with the property whilst the property is under arrest is guilty of contempt and in law, liable to a commital or a fine ...

The Supreme Court in the reported decision of *Wee Choo Keong*'s case established the principle that a defendant in contempt cannot be heard further in the same proceedings for his own benefit unless and until he has purged his contempt.

G

His Lordship Tun Abdul Hamid Omar LP elucidates the principle at pp 220–221 as follows:

H

> It is established law that a person against whom an order court has been issued is duty bound to obey that order until it is set aside. It is not open for him to decide for himself whether the order was wrongly issued and therefore the order does not require obedience. *His duty is one of obedience until such time as the order may be set aside or varied. Any person who fails to obey an order of court runs the risk of being held in contempt with all its attendant consequences*.

I

> It has not been seriously disputed and indeed we find that it *is also an established general rule of law that a party in contempt cannot be heard further in the same proceedings for his own benefit unless and until he as purged his contempt*. (Emphasis added.)

His Lordship emphasized the rationale behind the principle as one based on public policy in that orders of court must be obeyed strictly when he stated at p 221:

> The rationale for the rule is public policy. Orders of court must be treated with respect and require strict obedience.
>
> In this regard, we are mindful of the competing public interest in a litigant having a right to be heard. *Although the right to be heard is a fundamental right vested in all litigants, that right however cannot be taken as an absolute right. Where the litigant shows himself to have little or no regard to an order issued against him, then he has to an extent, forfeited his right to be heard or at least postponed that right until he has suitably purged him contempt.* (Emphasis added.)

Since the principle was established by the apex court of, this country, this court is duty bound to adhere to the principle so established.

It is my judgment that the act of selling the vessel in the face of the warrant of arrest which is in full force and effect is a blatant disobedience of a court order and such blatant disobedience and utter disrespect cannot be condoned by this court.

To add insult to injury, this is the second act of contempt committed by the defendants and they do not seem to be remorseful of their action but rather taking a recalcitrant, intransigent and highly confrontational attitude. The act of disposing the vessel in the face of an existing court order amounts to contempt of the highest degree for which the defendants cannot treat with impunity.

It is indeed ironic for the defendant who has clearly shown a blatant disregard for the warrant of arrest to now submit to this court and persuade the court to order the dispute for arbitration. The court cannot, in the circumstances, be made to aid a recalcitrant contemnor for by having 'little or no regard to the order issued against him, he has forfeited his right to be heard or at least postponed that right until he has suitably purged the contempt'.

In such a situation, it would be a travesty of justice to invoke the court's discretion in favour of a recalcitrant contemnor who treats court's order with impunity and disrespect.

In the light of the aforesaid, I concur with the submissions of counsel for the plaintiffs in that by the action of disposing the vessel, the defendant has prima facie committed contempt of the warrant of arrest dated 13 November 1997 and they cannot based on the principle of law established in *Wee Choo Keong*'s case aforesaid to proceed with their application in encl 24 unless and until they have purged the contempt and by reason, thereof, I uphold the preliminary objection and accordingly, dismiss encl 24 with costs.

Preliminary objection upheld and encl 24 dismissed with costs.

Reported by Ezatul Zuria Azhari